

**RULE 27 – PROBATION – COURT-IMPOSED CONDITIONS OF PROBATION MUST BE RELATED TO PROPER PROBATIONARY GOALS.....Revised 3/2010**

When courts impose special conditions of probation on probationers, the court-imposed conditions must be reasonably related to the goals of rehabilitation and probation. In *State v. Kessler*, 199 Ariz. 83, 13 P.3d 1200 (App. 2000), Kessler was charged with sexual abuse after he rubbed the breasts of a thirteen-year-old girl. He later pleaded guilty to aggravated assault for the offense. The trial court placed Kessler on probation and ordered as a special condition of probation that he abide by certain sex offender regulations, one of which prohibited him from having unsupervised contact with any child under 18 without prior approval from his probation officer. Kessler's probation officer filed a petition to revoke his probation after learning that Kessler had had unsupervised contact with children during a weekend church retreat. At the revocation hearing, Kessler did not deny the facts, but argued that the regulations "were unenforceable because they unjustly prohibited his 'innocent physical presence' among minors and thereby violated his constitutional rights, including his right to the free exercise of his religion." *Id.* at 86, ¶ 10, 13 P.3d at 1203. The trial court rejected Kessler's arguments and Kessler appealed. The Court of Appeals noted that the courts have consistently upheld conditions of probation that restrict a defendant's freedom of speech and association as long as the conditions bore a reasonable relationship to the goals of probation. The Court then found that the regulations were appropriate because they were clearly related to the goals of Kessler's probation:

A reasonable relationship clearly exists between [the] requirement that Kessler not have unsupervised or unchaperoned contact with children and the goals of rehabilitating him and protecting the public from any further criminal acts he might commit. We therefore reject his challenge to [the probationary conditions]. Although restrictive of Kessler's ability to be

“merely present” with minors in conventional places such as schools, shopping malls, churches, sporting events, or social events, [the probationary conditions] are not so unreasonable that they violate the broad discretion given to the trial court in setting terms of probation.

*Id.* at 89, ¶ 22, 13 P.3d at 1206 [citations and quotation marks omitted]. The Court of Appeals cited *United States v. Bee*, 162 F.3d 1232, 1235-36 (9th Cir. 1998), which upheld a supervised release condition prohibiting contact with children unless approved by a probation officer and stated, “even very broad conditions are reasonable if they are intended to promote probationer’s rehabilitation and to protect the public.”

In *State v. Nickerson*, 164 Ariz. 121, 791 P.2d 647 (App. 1990), as a condition of Nickerson’s probation, the court required him to avoid contact with his estranged wife, a co-defendant. He appealed, arguing that this condition unreasonably infringed on his constitutional rights to privacy. The Court of Appeals disagreed, finding that the couple’s ongoing criminal problems were directly related to their continuing relationship. The Court of Appeals deemed the probation condition imposed by the court appropriate, stating, “unless the terms of probation are such that they ... bear no reasonable relationship whatever to the purpose of probation over incarceration, the appellate courts will not interfere with the trial court’s exercise of discretion in the formulation of the terms and conditions of probation.” *Id.* at 123, 791 P.2d at 649, *quoting State v. Turner*, 142 Ariz. 138, 144, 688 P.2d 1030, 1036 (App. 1984).